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Hollywood Firefighters' Pension System*

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

CITY OF HOLLYWOOD FIREFIGHTERS'
PENSION SYSTEM,

Plaintiff,

v.

STEVEN D. BLACK, MARK A. CHANCY,
CELESTE A. CLARK, THEODORE F.
CRAVER, JR., MARIA R. MORRIS,
RICHARD B. PAYNE, JR, RONALD L.
SARGENT, CHARLES W. SCHARF, AND
SUZANNE M. VAUTRINOT,

Defendants,

and

WELLS FARGO & COMPANY,

Nominal Defendant.

Case No.: 4:23-cv-02445-JST

**REQUEST FOR JUDICIAL NOTICE
IN SUPPORT OF PLAINTIFF'S
OPPOSITION TO NOMINAL
DEFENDANT WELLS FARGO &
COMPANY'S MOTION TO DISMISS
THE COMPLAINT FOR FAILURE TO
ADEQUATELY PLEAD DEMAND
FUTILITY**

Hearing: July 18, 2024
Time: 2:00 p.m.
Courtroom 6
Hon. Jon S. Tigar

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

Plaintiff City of Hollywood Firefighters' Pension System ("Plaintiff") hereby requests that the Court take judicial notice of or consider as incorporated by reference certain Exhibits attached to the accompanying Declaration of Eric L. Zagar in Support of Plaintiff's Opposition to Nominal Defendant Wells Fargo & Company's Motion to Dismiss the Complaint for Failure to Adequately Plead Demand Futility ("Zagar Declaration").

ARGUMENT

As a general rule, the Court "may not consider any material beyond the pleadings in ruling on a Rule 12(b)(6) motion." *United States v. Corinthian Colleges*, 655 F.3d 984, 998 (9th Cir. 2011) (quoting *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001)). The Court may, however, "consider unattached evidence on which the complaint 'necessarily relies' if: (1) the complaint refers to the document; (2) the document is central to the plaintiff's claim; and (3) no party questions the authenticity of the document." *Id.* at 999 (citing *Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006)). The Court may also take judicial notice, under Federal Rule of Evidence 201, of "matters of public record" that are not "subject to reasonable dispute." *Id.* (citing *Lee*, 250 F.3d at 689).

The Court may properly take judicial notice of the following exhibits:

Exhibit	Description
A	Order Overruling Demurrer to Complaint, <i>Himstreet, et al. v. Scharf, et al.</i> , Case No. CGC-22-599223 (Cal. Super. Ct. Oct. 5, 2022)
B	Memorandum of Points and Authorities in Support of Wells Fargo & Company's Demurrer to the Stockholder Derivative Complaint on Demand-Futility Grounds, <i>Himstreet, et al. v. Scharf, et al.</i> , Case No. CGC-22-599223 (Cal. Super. Ct. July 18, 2022)
C	Petition for Writ of Mandate or Other Relief, <i>Wells Fargo & Co. v. The Superior Court of the State of California for the County of San Francisco</i> , Case No. A166593 (Ct. App. Nov. 17, 2022)
D	Denial of Petition for Writ of Mandate or Other Relief, <i>Wells Fargo & Co. v. The Superior Court of the City & County of San Francisco</i> , Case No. A166593 (Ct. App. Dec. 14, 2022)

The Court may take judicial notice of Exhibit A because the Plaintiff references it in its complaint. Verified Consolidated Shareholder Derivative Complaint, ECF No. 116, ¶217 (the "Complaint"). Plaintiff relies on Exhibit A in asserting that Wells Fargo & Company is precluded

1 from relitigating the issue of demand futility, and no party can reasonably question the authenticity
2 of the document.

3 The Court may also take judicial notice of Exhibits A-D because they are court filings and are
4 therefore matters of the public record not subject to reasonable dispute. *See, e.g., Reyn's Pasta Bella,*
5 *LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006) (taking judicial notice of court filings);
6 *see also Shaev v. Baker*, No. 16-cv-05541-JST, 2017 WL 1735573, at *7 (N.D. Cal. May 4, 2017)
7 (same).

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9
10 Dated: May 16, 2024

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